

# CONTRACT

## RFP #2023-05, Right of Way, Park Maintenance, and Town Property Landscape Services

This agreement (“Agreement”) is made and entered into effective this 17th day of March, 2024 (“Effective Date”), by and between the:

**Town of Windermere, Florida**, a municipal corporation chartered and operating under the laws of the State of Florida  
Attn: Robert Smith, Town Manager  
614 Main Street  
Windermere, FL 34786  
rsmith@town.windermere.fl.us  
407-876-2563 x 5324

hereinafter referred to as “Owner” and:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

hereinafter referred to as “Contractor”.

### RECITALS

WHEREAS, Owner desires to retain Contractor to perform right of way, park maintenance, and landscape services within the Town limits, including but not limited to mowing, trimming, and planting. The specific type and scope of services to be performed by Contractor are described in Exhibit “A”, Scope of Services, which is attached to this Contract, and incorporated by reference herein (“Services”).

WHEREAS, the Contractor is desirous of performing such Services upon the terms and conditions herein;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, it is agreed by and between the parties hereto as follows:

#### I. SCOPE OF Services

- A. **Services:** Contractor shall perform the Services set forth on Exhibit “A” in a timely and efficient manner in the best interests of Owner.
  
- B. **Authorization of Additional Services:** From time to time, as needed, Owner will notify Contractor when specific additional services are required and will provide the Contractor with a description and location for the particular additional services requested (“Additional Services”). Contractor will respond with the time required to perform the Additional Services and estimate of the cost based upon the hourly rates set forth in Exhibit “A”, which hourly rates include all Contractor’s costs, including, but not limited to materials, labor, services, overhead, mobilization, demobilization, removal costs, general conditions costs, travel expenses, equipment, taxes, and profit. Contractor shall not

proceed until Owner responds with written authorization and notice to proceed for any Additional Services. The parties may negotiate a lump sum for any Additional Services.

## **II. PAYMENT**

- A. **BILLING AND PAYMENTS**: Contractor will bill Owner monthly on the last day of each month for the Services performed in an amount equal to Monthly Fee set forth on Exhibit "A". Additional Services shall also be billed on the last day of the month of performance. Owner shall pay the Contractor in accordance with the Florida Local Government Prompt Payment Act, Chapter 218, Florida Statutes.
- B. **INVOICES**: All Contractor invoices shall be prepared in the format prescribed by Owner. For Additional Services, the Invoice shall include a detailed breakdown of each type of Additional Service provided, the quantities of each of the Additional Services performed, the hourly rates, the dates of performance of the Additional Services, and the total cost. All requests for payment must be accompanied by a narrative description of the scope of Services performed by the Contractor covered by the invoice.

## **III. TERM**

The term of this Contract shall be for there (3) years, beginning on the Effective Date and ending on March 16, 2027 ("Term"). This Agreement may, by mutual written agreement of the parties, be extended for three (3) additional one-year terms. This Contract shall terminate at the earlier of the expiration of the Term, unless extended in writing by both Owner and Contractor.

## **IV. RESPONSIBILITY OF THE CONTRACTOR**

- A. Contractor shall be responsible for the performance, professional quality, technical accuracy, and the coordination of all Services furnished by the Contractor under this Contract. Contractor shall, without additional compensation, correct or revise any errors or deficiencies in its Services.
- B. Neither the Owner's review, approval or acceptance of, nor payment for, the Services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and Contractor shall be and remain liable to the Owner in accordance with applicable law for all damages suffered directly or indirectly by the Owner caused by Contractor's negligent performance of any of the Services furnished under this Contract. The rights and remedies of Owner provided for under this Contract are in addition to any other rights and remedies provided by law.

## **V. OWNER'S RESPONSIBILITIES**

Owner shall:

- A. Furnish Contractor with existing data, plans, profiles, maps, and other information

necessary for the Services, all of which shall be and remain the property of Owner and shall be returned to Owner upon completion of the Services.

- B. Make Owner personnel available on a time-permitting basis, where required and necessary to assist and provide direction to Contractor. The availability and necessity of said personnel to assist Contractor shall be determined solely within the discretion of Owner.
- C. Owner designates **Tonya Elliot Moore, Public Works Director**, to represent Owner in all technical matters pertaining to and arising from the Services and performance of this Contract.

## **VI. TERMINATION OF CONTRACT**

### **A. TERMINATION FOR DEFAULT:**

The Owner may, by written notice to Contractor, terminate this Contract for default in whole or in part if Contractor fails to:

1. provide Services that comply with the specifications of Exhibit "A".
2. to perform the Services timely.
3. perform any of the other provisions of this Contract.

Prior to termination for default, the Owner will provide written notice to the Contractor affording Contractor the opportunity to cure the deficiencies or to submit a specific plan to resolve the deficiencies within ten (10) calendar days after receipt of the notice. Failure to adequately cure the deficiency shall result in termination action. Such termination may also result in suspension or debarment of Contractor. Contractor shall be liable for any damage to Owner resulting from Contractor's default of the Contract. This liability includes any increased costs incurred by Owner in completing Contract performance with others.

In the event of termination by Owner for any cause, the Contractor will have, in no event, any claim against Owner for lost profits or compensation for lost opportunities. After a receipt of a Termination Notice and except as otherwise directed by the Owner Contractor shall:

- Stop all work and Services on the date and to the extent specified.
- Terminate and settle all orders and sub-contracts relating to the performance of the terminated Services.
- Transfer all Services in process, completed Services, and other materials related to the terminated Services as directed by the Owner.
- Continue and complete all parts of Services that have not been terminated.

If Contractor's failure to perform the Contract arises from causes beyond the control and without the fault or negligence of Contractor, the Contract shall not be terminated for default. Examples of such causes include (1) acts of God or the public enemy, (2) acts of a government in its sovereign capacity, (3) fires, (4) floods, (5) epidemics, (6) strikes and (7) unusually severe weather.

**B. TERMINATION FOR CONVENIENCE:**

Owner, by written notice, may terminate this Contract, in whole or in part, when it is in Owner's interest for convenience. If this Contract is terminated for convenience, Owner shall be liable only for Services properly delivered and accepted, which shall be Contractor's sole and exclusive remedy for such termination. Owner's Notice of Termination for convenience shall provide the Contractor seven (7) days prior notice before it becomes effective.

**C. PAYMENT IN EVENT OF TERMINATION:**

If this Contract is terminated before the Term is completed, Contractor's sole and exclusive remedy is payment for the Services performed, and Contractor shall be only paid for the Services satisfactorily performed. Any additional costs incurred by the Owner as a result of such termination shall be deducted from the amount due Contractor, in the event the Contract termination is for cause as described herein.

**VII. INDEMNITY/INSURANCE AND SAFETY REQUIREMENTS**

Contractor agrees to maintain on a primary basis and at its sole expense, at all times throughout the duration of this contract the insurance set forth on Exhibit "B". These requirements, as well as Owner's review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities assumed by Contractor under this contract. Contractor is required to maintain any coverage required by federal and state workers' compensation or financial responsibility laws including but not limited to Chapter 324 and 440, Florida Statutes, as may be amended from time to time.

Contractor shall require and ensure that each of its sub-consultants providing Services hereunder (if any) procures and maintains until the completion of their respective Services, insurance of the types and to the limits specified herein.

Insurance carriers providing coverage required herein must be licensed to conduct business in the State of Florida and must possess a current A.M. Best's Financial Strength Rating of A- Class VIII or better. *(Note: State licenses can be checked via [www.floir.com/companysearch/](http://www.floir.com/companysearch/) and A.M. Best Ratings are available at [www.ambest.com](http://www.ambest.com))*

Prior to execution and commencement of any operations/Services provided under this Contract Contractor shall provide Owner with current certificates of insurance evidencing all required coverage. In addition to the certificate(s) of insurance Contractor shall also provide endorsements for each policy as specified above. All specific policy endorsements shall be in the name of Owner.

Contractor shall submit insurance renewal certificates annually to the Owner and immediately upon request by either Owner or Owner's contracted certificate compliance management firm. The certificates shall clearly indicate that Contractor has obtained insurance of the type, amount

and classification as required for strict compliance with this insurance section. Contractor shall notify the Owner not less than thirty (30) business days (ten [10] business days for non-payment of premium) of any material change in or cancellation/non-renewal of insurance coverage. The Contractor shall provide evidence of replacement coverage to maintain compliance with the aforementioned insurance requirements to Owner or its certificate management representative five (5) business days prior to the effective date of the replacement policy(ies).

The certificate holder shall read:

**Town of Windermere, Florida**, a municipal corporation chartered and operating under the laws of the State of Florida  
614 Main Street  
Windermere, FL 34786

**Payment and Performance Bonds:** Not required.

**INDEMNIFICATION:**

Contractor to the extent permitted in Section 725.08, Florida Statutes shall indemnify and hold harmless Owner and its officers and employees from liabilities damages, losses, and costs (including attorney's fees) to the extent caused by the negligence or intentionally acts of Contractor and persons employed or utilized by Contractor in the performance of this Contract. The remedy provided to Owner by this paragraph shall be in addition to and not in lieu of any other remedy available under this Contract or otherwise and shall survive the termination of this Contract.

**SAFETY AND PROTECTION OF PROPERTY (for Services provided on the premises of Owner)**

Contractor shall at all times:

- Initiate, maintain and supervise all safety precautions and programs in connection with its Services under this Contract.
- Take all reasonable precautions to prevent injury to Contractor employees, Owner employees, Owner attendees and all other persons affected by their operations.
- Take all reasonable precautions to prevent damage or loss to property of Owner, or of other vendors, consultants or agencies and shall be held responsible for replacing or repairing any such loss or damage.
  - Comply with all ordinances, rules, regulations, standards and lawful orders from authority bearing on the safety of persons or property or their protection from damage, injury or loss. This includes but is not limited to:
    - ✓ ...Occupational Safety and Health Act (OSHA)
    - ✓ ...National Institute for Occupational Safety & Health (NIOSH)
    - ✓ ...National Fire Protection Association (NFPA)
    - ✓ ...American Society of Heating, Refrigeration & Air-Conditioning Engineers (ASHRAE)

## VIII.

### **TRUTH IN NEGOTIATION AND MAINTENANCE AND EXAMINATION OF RECORDS**

- A. Contractor hereby represents, covenants and warrants that wage rates and other factual costs supporting the compensation provided for in this Contract are accurate, complete and current as of the date of contracting. It is further agreed that the Contract price shall be adjusted to exclude any amounts where the Owner determines the Contract price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs.
- B. The Contractor shall keep adequate records and supporting documents applicable to this Contract. Said records and documentation shall be retained by the Contractor for a minimum of five (5) years from the date of final payment on this contract. If any litigation, claim or audit is commenced prior to the expiration of the five (5) year period, the records shall be maintained until all litigation, claims or audit findings involving the records have been resolved.
- C. Contractor's "records and supporting documents" as referred to in this Contract shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, invoices, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in the Owner's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract document.
- E. Records and documents subject to audit shall also include those records and documents necessary to evaluate and verify direct and indirect costs, (including overhead allocations) as they may apply to costs associated with this Contract. In those situations where Contractor's records have been generated from computerized data (whether mainframe, mini-computer, or PC based computer systems), Contractor agrees to provide the Owner's representatives with extracts of data files in computer readable format on data disks or suitable alternative computer exchange formats.
- F. The Owner and its authorized agents shall have the right to audit, inspect and copy records and documentation as often as the Owner deems necessary throughout the term of this contract and for a period of five (5) years after final payment. Such activity shall be conducted during normal business working hours. The Owner, or any of its duly authorized representatives, shall have access within forty-eight (48) hours to such books, records, documents, and other evidence for inspection, audit and copying.
- G. The Owner, during the period of time defined by the preceding paragraph, shall have the right to obtain a copy of and otherwise inspect any audit made at the direction of the Contractor as concerns the aforesaid records and documentation.
- H. Records and documentation shall be made accessible at the Contractor's local place of business. If the records are unavailable locally, it shall be the Contractor's responsibility to ensure that all required records are provided at the Contractor's expense including payment of travel and maintenance costs incurred by the Owner's authorized representatives or designees in accessing records maintained out of the Owner. The

direct costs of copying records, excluding any overhead cost, shall be at the Owner's expense.

- I. Contractor shall require all payees (examples of payees include sub-consultants, insurance agents, material suppliers, etc.) to comply with the provisions of this article by including the requirements hereof in a written contract agreement between Contractor and payee. Such requirements include a flow-down right of audit provisions in contracts with payees, which shall also apply to sub-consultants and sub-sub consultants, material suppliers, etc. Contractor shall cooperate fully and shall cause all aforementioned parties and all of Contractor's sub-consultants (including those entering into lump sum sub-contracts and lump sum major material purchase orders) to cooperate fully in furnishing or in making available to the Owner from time to time whenever requested in an expeditious manner any and all such records, documents, information, materials and data.
- J. The Owner's authorized representatives or designees shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Contract and shall have adequate and appropriate work space, in order to conduct audits in compliance with this article.
- K. Even after a change order proposal has been approved, Contractor agrees that if the Owner later determines the cost and pricing data submitted was inaccurate, incomplete, not current or not in compliance with the terms of the Contract regarding pricing of change orders, then an appropriate contract price reduction will be made. Such post-approval contract price adjustment will apply to all levels of Contractors and/or sub-consultants and to all types of change order proposals specifically including lump sum change orders, unit price change orders, and cost-plus change orders.
- L. If an audit inspection or examination by the Owner, or its designee, in accordance with this article discloses overpricing or overcharges (of any nature) by the Contractor to the Owner in excess of one-half of one percent (0.5%) of the total contract billings, the reasonable actual cost of the Owner's audit shall be reimbursed to the Owner by the Contractor. Any adjustments and /or payments that must be made as a result of any such audit or inspection of the Contractor's invoices and/or records and supporting documents shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of the Owner's findings to the Contractor.

#### **IX. OWNERSHIP OF DOCUMENTS**

It is understood and agreed that all documents, including detailed reports, plans, original drawings, survey field notebooks, and all other data other than working papers, prepared or obtained by the Contractor in connection with its Services hereunder and are the sole property of Owner.

#### **X. STANDARDS OF CONDUCT**

- A. Contractor represents that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Contract and that he has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Contractor any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award of this Contract.

- B. Contractor shall comply with all Federal, State and local laws and ordinances in effect on the date of this Contract and applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, religion, sex, sexual orientation and gender expression/identity, color, age, disability or national origin in the performance of work under this Contract.
- C. Contractor hereby certifies that no undisclosed conflict of interest exists with respect to the present Contract, including any conflicts that may be due to representation of other clients, other contractual relationships of the Contractor, or any interest in property which the Contractor may have. The Contractor further certifies that any apparent conflict of interest that arises during the term of this Contract will be immediately disclosed in writing to the Owner. Violation of this section will be considered as justification for immediate termination of this Contract under the provisions of Article VII.

#### **XI. NO ASSIGNABILITY**

- A. Contractor shall not assign any interest in this Contract and shall not transfer any interest in the same without prior written approval of the Owner, provided that claims for the money due or to become due the Contractor from the Owner under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Owner.

#### **XII. INDEMNIFICATION FOR TORT ACTIONS/LIMITATION OF LIABILITY**

- A. The provisions of Florida Statute 768.28 applicable to Owner apply in full to this Contract. Any legal actions to recover monetary damages in tort for injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the Owner acting within the scope of his/her office or employment are subject to the limitations specified in this statute.
- B. No officer, employee or agent of the Owner acting within the scope of his/her employment or function shall be held personally liable in tort or named as a defendant in any action for any injury or damage suffered as a result of any act, event, or failure to act.
- C. The Owner shall not be liable in tort for the acts or omissions of an officer, employee, or agent committed while acting outside the course and scope of his/her employment. This exclusion includes actions committed in bad faith or with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.
- D. **Sovereign Immunity. Owner is a political subdivision of the State of Florida and enjoys sovereign immunity. To the extent that this Agreement imposes any liability upon Owner to Contractor, if at all, Owner's obligation is subject to the limitations of liability as provided in Section 768.28, Florida Statutes, as amended, and does not act as a waiver of Owner's entitlement to sovereign immunity as a matter of statutory and common law.**
- E. Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Contract, including damages for losses of use, principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, lost bonding capacity, loss of future work, loss of productivity,



lost rentals, and for loss of profit.

### **XIII. EQUAL OPPORTUNITY**

Discrimination Prohibited. Contractor and Contractor's subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. Contractor shall take affirmative action to ensure that qualified applicants are employed if work is available, and that employees are treated during employment without regard to their race, religion, color, sex, or national origin. Contractor agrees to post in places available to all employees and applicants for employment, notices setting forth the policies of nondiscrimination.

### **XIV. CONTROLLING LAWS**

This Contract shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the provisions of this Contract will be held in Orange County, Florida. Exclusive venue for any litigation involving this contract shall be the Ninth Circuit Court in and for Orange County, Florida.

### **XV. AVAILABILITY OF FUNDS**

The obligations of Owner under this Contract are subject to availability of funds lawfully appropriated for its purpose by the Owner, or other specified funding source for this Contract.

### **XVI. PROHIBITION AGAINST CONTINGENT FEES**

Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Contract and that they have not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Contractor any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award of this Contract. For the breach or violation of this provision, the Owner shall have the right to terminate the Contract at its sole discretion, without liability and to deduct from the Contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

### **XVII. TOBACCO FREE**

All Owner facilities and operations shall be tobacco free. This policy shall apply to parking lots, parks, break areas and worksites. It is also applicable to Contractor and their personnel during Contract performance on Owner owned or leased property. Tobacco is defined as tobacco products including, but not limited to, cigars, cigarettes, e-cigarettes, pipes, chewing tobacco and snuff. Failure to abide by this policy may result in civil penalties levied under Chapter 386, Florida Statutes and/or contract enforcement remedies.

### **XVIII. VERIFICATION OF EMPLOYMENT STATUS**

Prior to the employment of any person performing Services under this Contract, Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of: (a) all employees within the State of Florida that are hired by the Contractor after the

execution of the contract who are providing labor under the contract during the contract term; and, (b) all employees within the State of Florida of any of the Contractor's sub-consultants that are hired by those sub-consultants after the execution of the contract who are providing labor under the contract during the contract term. Please refer to USCIS.gov for more information on this process.

**Only those employees determined eligible to work within the United States shall be employed under the contract.**

Therefore, by submission of a proposal in response to this solicitation, the Contractor confirms that all employees in the above categories will undergo e-verification before performing labor under this contract. The Contractor further confirms his commitment to comply with the requirement by completing the E-Verification certification, contained in this solicitation.

**XIX.**

**FLORIDA CONVICTED/SUSPENDED/DISCRIMINATORY COMPLAINTS:**

By executing this Contract, Contractor affirms that it is not currently listed in the Florida Department of Management Services Convicted/Suspended/Discriminatory Complaint Vendor List.

**XX. SEVERABILITY**

The provisions of this Contract are declared by the parties to be severable. However, the material provisions of this Contract are dependent upon one another, and such interdependencies a material inducement for the parties to enter into this Contract. Therefore, should any material term, provision, covenant or condition of this Contract be held invalid or unenforceable by a court of competent jurisdiction, the party protected or benefited by such term, provision, covenant, or condition may demand that the parties negotiate such reasonable alternate contract language or provisions as may be necessary either to restore the protected or benefited party to its previous position or otherwise mitigate the loss of protection or benefit resulting from holding.

**XXI.**

**PUBLIC RECORDS COMPLIANCE (APPLICABLE FOR SERVICE CONTRACTS)**

To the extent Contractor is acting on behalf of Owner as provided under Subsection 119.011(2) of the Florida Statutes, Contractor shall:

- i. Keep and maintain public records required by Owner to perform the services under this Agreement.
- ii. Upon request from Owner's custodian of public records, provide Owner with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the costs provided in Chapter 119 of the Florida Statutes or otherwise provided by law.
- iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Contractor does not transfer the records to Owner.
- iv. Upon completion of the Agreement, transfer, at no cost, to Owner all public records in possession of Contractor or keep and maintain public records required by Owner to perform the

service. If the Contractor transfers all public records to Owner upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Owner, upon request from Owner's custodian of public records, in a format that is compatible with the information technology systems of Owner.

b. If the Contractor fails to provide the public records to Owner within a reasonable time the Contractor may be subject to penalties under Section 119.10 of the Florida Statutes. Further, Owner may exercise any remedies at law or in equity, including, without limitation, the right to (i) impose sanctions and assess financial consequences, (ii) withhold and/or reduce payment, and (iii) terminate this Agreement in accordance with the terms hereof.

Contractor shall defend, at its own cost, indemnify, and hold harmless Owner, their officers, directors, and employees from and against all claims, damages, losses, and expenses, (including but not limited to fees and charges of attorneys or other professionals and court and arbitration or other dispute resolution costs) arising out of or resulting from Contractor's failure to comply with the terms of this Section.

c. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT OWNER'S CUSTODIAN OF PUBLIC RECORDS FOR THIS PROJECT, , D. BURKHALTER AT 407-876-2563 X 5323, [DBURKHALTER@TOWN.WINDERMERE.FL.US](mailto:DBURKHALTER@TOWN.WINDERMERE.FL.US), 614 MAIN STREET, WINDERMERE, FLORIDA 34786 .**

## **XXII. SCRUTINIZED COMPANIES LIST**

By executing this Agreement, Contractor certifies that it is not: (1) listed on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725 of the Florida Statutes, (2) engaged in a boycott of Israel, (3) listed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to section 215.473 of the Florida Statutes, or (4) engaged in business operations in Cuba or Syria. Pursuant to section 287.135(5) of the Florida Statutes, Space Florida may immediately terminate this Agreement for cause if the Contractor is found to have submitted a false certification as to the above or if the Contractor is placed on the Scrutinized Companies that Boycott Israel List, is engaged in a boycott of Israel, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria, during the term of the Agreement. If Owner determines that the Contractor has submitted a false certification, Owner will provide written notice to the Contractor. Unless the Contractor demonstrates in writing, within 90 calendar days of receipt of the notice, that Owner's determination of false certification was made in error, Owner shall bring a civil action against the Contractor. If Owner's determination is upheld, a civil penalty equal to the greater of \$2 million or twice the amount of this Agreement shall be imposed on the Contractor, and the Contractor will be ineligible to bid on any Agreement with a Florida agency or local governmental entity for three years after the date of Owner's

determination of false certification by the Contractor. If federal law ceases to authorize the states to adopt and enforce the contracting prohibition in this Section, this Section shall be null and void without further action of the parties.

### **XXIII.** **Miscellaneous**

A. Electronic Signatures. The parties agree that this Agreement and any amendments may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. For purposes of this Agreement “electronic signature” includes faxed versions of an original signature, electronically scanned and transmitted versions (via pdf) of an original signature, and portable document formats which include, but are not limited to, Abode or DocuSign.

B. COVID19. All amounts necessary to comply with all regulations, ordinances, and laws concerning COVID19, including PPE, sanitation, and social distancing requirements are included in the Unit Prices.

C. ENTIRE AGREEMENT. This Contract supersedes any and all agreements, either oral or written, between the parties hereto with respect to the rendering of Services by Contractor for Owner and contains all the covenants and agreements between the parties with respect to the rendering of such Services. Each party to this Contract acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Contract shall be valid or binding. Any modification or amendment to this Contract will be effective only if it is in writing signed by both parties.

D. The use of radios, tape players, cd players, boom boxes, sound producing devices, and the like are prohibited on each project site.

E. Taxes. Contractor shall pay all federal, state, and local taxes, to include sales tax, social security, workman's compensation, unemployment insurance, and other required taxes which may be chargeable against labor, material, equipment, real estate and any other items necessary to and in the performance of this Contract.

F. Public Entity Crime. Contractor affirms that it is aware of the provisions of Section 287.133(2)(a), Florida Statutes, and that at no time has Contractor been convicted of a Public Entity Crime. Contractor agrees that it shall not violate such law and further acknowledges and agrees that any conviction during the term of this Contract may result in termination of this Contract by Owner.

G. Contractor represents that it is not on the State's discriminatory vendor list and that for services related to this Contract, Contractor shall not transact business with any entity that has been placed on the State's discriminatory vendor list.

H. Independent Contractor. The Contractor is and shall remain an independent contractor and not an employee of the Owner.

I. ESG Prohibition. Pursuant to Florida Statute 287.05701, Owner is prohibited from requesting

documentation of or considering a vendor's social, political, or ideological interests when determining if the vendor is a responsible vendor. Owner may not give preference to a vendor based on the vendor's social, political, or ideological interests.

J. Contractor is encouraged to use Florida's minority and service-disabled veteran businesses as subcontractors under this Agreement. The Certified Vendor Directory can be accessed from the website of the Florida Department of Economic Opportunity of Management Services, Office of Supplier Diversity located at:  
[https://www.dms.myflorida.com/agency\\_administration/office\\_of\\_supplier\\_diversity\\_osd](https://www.dms.myflorida.com/agency_administration/office_of_supplier_diversity_osd)

Contractor: \_\_\_\_\_

Owner: Town of Windermere

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## **Exhibit “A” Scope of Services and Pricing**

Contractor shall provide all labor, materials, personnel and equipment needed to conduct Town's Right of Way, Park Maintenance, and Town Property Landscape Services.

**Location of Services:** All services are limited to the areas designated on the Town of Windermere Right of Way Maintenance Map and to the extent approved by the Town Council and/or Town Manager.

**Annual Meeting:** At least annually, Contractor shall meet with Owner and discuss the Services, any needed changes in the Services, and Contractor's performance of the Services.

**Condition of Trucks and Equipment:** Contractor shall ensure that all trucks, containers, and equipment utilized will be washed, painted, maintained, and able to provide the Services in a presentable and professional manner.

### **Services to be Performed for the Annual Fee:**

1. Mowing of all turf areas as noted on the Town of Windermere Right of Way Maintenance Map forty (40) times per contract year. Weekly mowing will be required during heavy growing season which is generally considered from May through October.
2. Mowing of embankments and retention ponds will be to the edge of water. Any area deemed to be too wet for proper mowing will be mowed when ground has sufficiently dried.
3. All turf **areas** are to be cleared of litter prior to mowing so as to not shred or scatter foreign matter.
4. Spin trimming of grass areas inaccessible to mowing machinery to be concurrent with each mowing.
5. Edging of all sidewalks, driveways, parking areas and hard curb areas to be concurrent with each mowing within the designated mowing area.
6. Edging of plant beds within the Town Center to be concurrent with each mowing and in all other areas with every other mowing.
7. Weeding of plant beds shall be performed as often as necessary to maintain a

reasonably weed-free condition. Spray weeds in brick road around the landscaped roundabouts to keep that main thoroughfare on Main Street as free from weeds as possible.

8. Selective pruning to be performed on all ornamental trees and plants in order to maintain the natural habit of the plant and to ensure health and vigor.
9. Trees are to be trimmed or pruned up to a height of 8' (eight feet) above grade. Trees will be pruned back to branch collar to allow for proper healing. No limbs larger than 1- 1/2" (one and one half inches) in diameter are to be trimmed or removed.
10. Ground covers and vines to be sheared as necessary in a uniform manner to maintain a neat and clean appearance.
11. Shrubs and hedges to be sheared and pruned in a consistent manner to maintain optimum shape and size according to the individual species of plant.
12. All trimmings and clippings are to be collected and removed.
13. All sidewalks, parking areas and driveways are to be blown off to remove any debris generated from performing the services of this contract.
14. Planting of annuals within the downtown business district.

\_\_\_\_\_  
\_\_\_\_\_  
*(Frequency and amount to be determined and inserted here based upon proposals and negotiations).*

**Monthly Fee for Services:** \$ \_\_\_\_\_

**Hourly rates for Additional Services:** (insert chart)

## Exhibit B

### Insurance Requirements

a. The Contractor shall, at its expense, procure and maintain during the term of this Agreement insurance approved by Town of the following types or such other insurance as the Town may require from time to time:

- (1) **Worker's Compensation:** statutory benefits, as required by law.
- (2) **Employer's Liability:** limits of One Hundred Thousand Dollars (\$100,000) bodily injury by accident, injury and disease, and a Five Hundred Thousand Dollar (\$500,000) policy aggregate limit.
- (3) **Comprehensive General Liability:** in an amount of at least One Million Dollars (\$1,000,000.00) for injuries, including but not limited to wrongful and accidental death per person and Five Million Dollars (\$5,000,000.00) for any one accident, and property damage insurance in an amount of at least One Million Dollars (\$1,000,000.00).
- (4) **Comprehensive Automobile Liability:** in an amount of at least One Million Dollars (\$1,000,000.00) bodily injury for each person and Five Million Dollars (\$5,000,000.00) for each occurrence and One Million Dollars (\$1,000,000.00) Property Damage for each accident.

b. On or before the Effective Date, the Contractor shall furnish the Town certificates of insurance evidencing compliance with the coverage requirements in this section and allowing thirty days written notice of any change, cancellation, or non-renewal. The certificates must contain the following words: "*Should any of the above described policies be canceled before the expiration date, the issuing company will mail a thirty day notice to the certificate holder named herein.*" Thereafter the Contractor shall provide, annually, certificates evidencing that such insurance remains in effect to the extent required under this Agreement.